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Opinion on transfer from Supreme Court

OPINION AFTER TRANSFER FROM THE CALIFORNIA SUPREME COURT

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. LARRY DARNELL MONROE, Defendant and Appellant.	D070387 (Super. Ct. Nos. SCN352205, SCN352174)

APPEAL from judgments of the Superior Court of San Diego County, Michael J. Popkins, Judge. Affirmed with directions.

David W. Beaudreau, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

In two separate cases, Larry Darnell Monroe pleaded guilty to possession of methamphetamine for sale. (Health & Saf. Code,[1] § 11378.) In both cases, he admitted three prior drug-related felony convictions. (§ 11370.2, subd. (c).) In one case (case No. SCN352174), he also admitted a prison prior. (Pen. Code, § 667.5, subd. (b).) In the other (case No. SCN352205), he admitted he committed the charged offense while released on bail. (Pen. Code, § 12022.1, subd. (b).)

At the original sentencing, the trial court struck the prison prior and the out-on-bail enhancement. In one case, the prior drug conviction enhancements were stricken (case No. SCN352205). The court imposed a criminal laboratory analysis fee (§ 11372.5, subd. (a)) and a drug program fee (§ 11372.7, subd. (a)), with related assessments. Monroe was originally sentenced to an aggregate term of 12 years eight months, composed of local custody and additional mandatory supervision (together with an electronic search condition). Monroe appealed.

In our original opinion, we disagreed with some of Monroe's contentions, that (1) the electronic search condition related to the mandatory supervision order was unreasonable and unconstitutionally overbroad; and (2) the trial court erred by applying penalty assessments to the criminal laboratory analysis and drug program fees. However, based on our analysis and the People's concession to two claims of error regarding the contents of the abstract of judgment, we directed the trial court to modify the abstract of judgment and the order granting mandatory supervision, to correct these identified errors:

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1 All further statutory references are to the Health and Safety Code unless noted.

(a) the statutory basis for each penalty assessment was not adequately specified; and (b) Monroe had admitted, and the trial court struck, not two but a single prison prior. We further ordered modification of the mandatory supervision order in one case (case No. SCN352205), to reflect that the suspended sentence in that case was eight months (rather than a longer term). We otherwise affirmed the judgment.

After this court filed its opinion, the Supreme Court granted review and held the case pending resolution of *People v. Ruiz* (2018) 4 Cal.5th 1100 (*Ruiz*). In the interim, Monroe filed a successful petition for writ of habeas corpus in the trial court, challenging enhancements imposed under section 11370.2. This information is gleaned from correspondence in the Supreme Court's file that was transmitted to us, a "Notice regarding mootness" from Monroe's attorney. In that file, we are advised that an amended abstract of judgment was issued on August 21, 2018, reducing Monroe's sentence by striking those enhancements. (§ 11370.2.) The amended abstract of judgment thus vacated the mandatory supervision order and with it, the electronic search condition. The People do not take issue with Monroe's attorney's assertion that the electronic search condition is now moot.

The Supreme Court has since issued its opinion in *Ruiz, supra*, 4 Cal.5th 1100, and it remanded the case to this court with directions to reconsider our opinion in that light. In response to our request for supplemental briefing, we received a letter brief from the People, urging us to follow *Ruiz* and conclude the trial court properly applied penalty assessments to the criminal laboratory and drug program fees. Monroe filed a short letter

brief, indicating he was submitting the matter to our discretion based on the existing briefs.

We now follow the high court's direction and reconsider our opinion on the remaining penalty assessments issue. Consistent with the holding and analysis in *Ruiz*, we again determine that the trial court correctly applied penalty assessments to the criminal laboratory analysis and drug program fees. (E.g., Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).)

Further, we order modification of the amended abstract of judgment to correct the remaining identified errors, (a) to specify the statutory basis for each penalty assessment; and (b) to clarify that Monroe admitted to and the trial court struck a single prison prior. We otherwise affirm the judgment.

I

FACTS

Because Monroe appeals judgments following two guilty pleas, the factual record regarding the underlying offenses is sparse. We recite the essential facts as they are set out in the charging documents, Monroe's guilty pleas, and the probation reports.

In October 2015, sheriff's deputies contacted Monroe and another individual outside a hotel room in Vista, California. The deputies discovered methamphetamine wrapped in a paper towel on the ground directly behind Monroe. During a consensual search of Monroe's hotel room, deputies found an iPhone box containing almost 35 grams of methamphetamines and a working scale. Monroe was carrying almost $1,000 in cash.

Five days later, following Monroe's arrest and release, sheriff's deputies executed a search warrant and searched Monroe's car and hotel room. In the car, deputies found approximately 58 grams of methamphetamine. In the hotel room, deputies found a digital tablet, a digital scale, and an additional gram of methamphetamine in a cigarette box. Monroe was carrying $80 in cash and an iPhone.

II

ELECTRONIC SEARCH CONDITION

As noted, we have been advised by material in the Supreme Court's file that Monroe obtained a trial court hearing on a habeas corpus petition, which challenged certain enhancements imposed under section 11370.2. Subsequently, an amended abstract of judgment was issued that struck the enhancements and deleted the mandatory supervision order and related electronic search condition. Accordingly, Monroe is no longer subject to any electronic search condition and his challenge to such a condition is moot.

III

PENALTY ASSESSMENTS

Monroe continues to contend the trial court erred by increasing the amounts assessed for the criminal laboratory analysis fee (§ 11372.5, subd. (a)) and the drug program fee (§ 11372.7, subd. (a)) to incorporate various penalty assessments. Penalty assessments apply to any "fine, penalty, or forfeiture imposed and collected by the courts

for all criminal offenses" and increase such fines, penalties, or forfeitures by a specified amount. (See Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).)[2]

In *Ruiz*, the court held in May 2018 that the criminal laboratory analysis and drug program fees were properly imposed for a conspiracy to commit the underlying offense. (*Ruiz, supra*, 4 Cal.5th 1100.) By enacting sections 11372.5 and 11372.7, the Legislature evidently intended the criminal laboratory analysis and drug program fees to constitute punishment, and a conspiracy is " 'punishable' " in the same manner as the underlying felony. (*Ruiz, supra*, at pp. 1104, 1109-1111.) Cases holding that the assessments under sections 11372.5 and 11372.7 do not constitute punishment were disapproved. (*Ruiz, supra*, at pp. 1112-1113, 1122, fn. 8.)

Following the guidance in *Ruiz, supra*, 4 Cal.5th 1100, we again conclude the trial court properly imposed the challenged fees and the attendant penalty assessments. The statutes' characterization of the criminal laboratory analysis fee and drug program fee as part of the " 'total fine' " and as "penalt[ies]" demonstrates the Legislature's intent that the fees are "fine[s]" or "penalt[ies]" under the statutes governing penalty assessments. (*Id.* at pp. 1110, 1118-1119; see *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153 [penalty assessments allowed in context of criminal laboratory analysis fee].) The trial court therefore did not err by imposing penalty assessments on these fees following Monroe's convictions.

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2 Although Monroe did not object to the penalty assessments in the trial court, we consider his argument because the erroneous imposition of penalty assessments is an unauthorized sentence that may be raised on appeal. (See *People v. Anderson* (2010) 50 Cal.4th 19, 26; *People v. Walz* (2008) 160 Cal.App.4th 1364, 1369.)

IV

MODIFICATION OF ABSTRACT OF JUDGMENT

Monroe further contends that even if the penalty assessments were properly applied, their statutory bases and amounts should be set forth in the abstract of judgment. He argues the trial court erred by simply listing, as the applicable fee, the fee amount and the penalty assessments as a single total figure.

Several courts have concluded that the abstract of judgment must specify the nature and amount of penalty assessments imposed following a criminal conviction, in addition to the base fines. (See, e.g., *People v. Johnson* (2015) 234 Cal.App.4th 1432, 1459; *People v. Hamed* (2013) 221 Cal.App.4th 928, 940; *People v. Sharret* (2011) 191 Cal.App.4th 859, 864, 869; *People v. High* (2004) 119 Cal.App.4th 1192, 1200.) As part of the abstract, the trial court is required "to list the amount and statutory basis for each base fine and the amount and statutory basis for each penalty assessment in the abstract of judgment." (*Hamed*, at p. 940.)

The trial court did not itemize the fines and penalty assessments. The amended abstract of judgment does not show this has been accomplished. It is appropriate to remand the matter for modification of the amended abstract of judgment to reflect the itemization of the fines and fees. (See *People v. High*, *supra*, 119 Cal.App.4th at p. 1200.) Further, we remand for the amended abstract of judgment to be modified to reflect that Monroe admitted, and the trial court struck, only one prison prior.

DISPOSITION

The judgment is affirmed. The trial court is directed to modify the amended abstract of judgment to (1) list the amount and statutory basis for each base fine and the amount and statutory basis for each penalty assessment and (2) reflect that Monroe admitted, and the trial court struck, one prison prior. The trial court is directed to forward a certified copy of the modified amended abstract of judgment to the California Department of Corrections and Rehabilitation.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.